

On May 25, 1995, Chameleon's President, Don Werlinger, came to Washington and met with the Chief of the AM Branch, James Burtle seeking a restoration of the STA. Burtle was unsympathetic and told Werlinger, "Get your ass back to Texas right now! And move that transmitter site back to Bay City!" Mr. Werlinger having relied on the Commission's previous grant of authority realized that to carry out Burtle's latest directive would be of great and irreparable detriment to his company--it would, indeed, put his company out of business.

On May 25, 1995, realizing the gravity of the situation, Werlinger went to see Burtle's supervisor, Larry Eads, the FCC's Chief of the Audio Services Division. After hearing Werlinger's story, Eads wrote at the bottom of the page of the rescission order the following:

"I hereby stay the execution of this order." See Exhibit 3.

Next, Werlinger received a letter dated July 25, 1995 from Eads seeking further information concerning Chameleon's transmitter site.

Eads' letter notes that objections to the STA had been filed by South Texas Broadcasting (a subsidiary of Salem Communications) and KWHI. (It should be noted that South Texas later withdrew its objection [Exhibit 4] and, although KWHI has not yet formally withdrawn its objection, it has given Chameleon verbal assurances that it will not oppose KFCC's application for permanent change of city of license

[Exhibit 8, paragraph 9] --a change that would produce signal propagation similar to that produced by operations under the present STA while affording additional protection to KWHI.) Additionally, irrespective of the KWHI complaint regarding the KFCC STA site, the 300 watt operation of KFCC dramatically reduces previously licensed overlap between the two stations.

Eads' letter stated that it has been the policy of the Commission's staff to require that, when a site loss is used as a justification for a STA, the loss be beyond the Appellant's control. Eads' letter then asked for specific details concerning how Chameleon "lost" the Bay City transmitter site; a demonstration that no better site existed; and details of the lease-back arrangement between KFCC and Landrum (the former owner) and further details possible construction of a tower on the new transmitter site. The letter also extended the expiration of the STA until August 4, 1995 to allow time for Chameleon to respond to Eads' letter.

On August 1, 1995, Chameleon filed on FCC Form 301 an application to make the STA the station's permanent transmitter location. Simultaneously, Chameleon sought an extension of the STA.

On August 4, Werlinger sent Eads a nineteen-page letter responding in detail to each of Eads' inquiries and providing specific information to substantiate that Chameleon's loss of its original transmitter site was a necessary condition of the

sale of the station to Chameleon; it was, therefore, beyond Appellant's control and, thus, involuntary.

On August 11, 1995, Eads wrote what is evidently the first of two letters to Werlinger. The first letter stated that Werlinger had not responded to Eads' July 25th letter, declaring that the STA had now expired, and ordering KFCC to cease operations from the STA site. In another letter, also dated August 11, 1995 and, evidently, written later the same day, Eads acknowledges receipt by fax of Werlinger's August 4th letter, reinstating the STA and extending it, pending further consideration of Werlinger's August 4th letter.

On September 1, 1995, South Texas Broadcasting withdrew its objections to KFCC's STA and it withdrew its request that the STA be cancelled. Exhibit 4. At the same time, South Texas Broadcasting assured the Commission that it would not object to Chameleon's Form 301 application for a permanent change of transmitter site.

Chameleon's 301 application was placed on public notice on September 6, 1995. Thus, the 30-day period during which oppositions may be filed to Chameleon's proposed permanent site change will be cut-off today, October 6, 1995. Exhibit 5. So far as Chameleon has been able to determine, there have been no objections filed with the Commission regarding the 301 application.

On September 8, 1995, in a letter signed by Stuart B. Bedell "for Larry Eads", Bedell complains that the responses

provided by Werlinger on August 4th were not sufficient. Bedell then cancelled the STA and ordered KFCC to immediately cease operations from the STA site. Exhibit 6.

On September 22, 1995, Werlinger wrote to Mass Media Bureau Chief Roy Stewart seeking reconsideration of Bedell's September 8th letter pending approval of its Form 301 application. Exhibit 7, page 4. The request for reconsideration was denied.

On October 3, 1995, Werlinger met in person with Stewart who refused to grant Chameleon's request for reconsideration and, again, ordered an immediate cessation of operations at the STA site, thereby again denying Appellant's request for reconsideration.

III. ANALYSIS

1. Movant has a likelihood of prevailing on the merits.

At issue is whether the FCC violated 5 U.S.C. Sec. 706(2)(A) by acting arbitrarily, capriciously, not in accordance with law and abusing its discretion in the manner in which it administered 47 U.S.C. Sec. 309 (f). That section of the Communications Act of 1934 authorizes the FCC to grant a temporary authorization if it "finds there are extraordinary circumstances requiring temporary operations in the public interest". See generally, Community Broadcasting Company v. F.C.C., 274 F.2d 753 (DC Cir.1960); Consolidated Nine, Inc.

F.C.C., 403 F. 2d 585 (DC Cir. 1968). On May 5, 1995, the FCC under its implementing regulations at 47 C. F. R. Sec. 73.1635 granted Appellant a Special Temporary Authorization (STA) and as indicated above, rescinded - stayed - extended - cancelled - and refused to reconsider its original grant.

The facts, when considered as a whole, do not support the legality of the FCC's actions. The FCC's rescission of KFCC's STA was based on erroneous interpretations of various facts and/or were spurious problems, iatrogenically created by the Commission's own actions. This administrative action is not in the public interest or convenience as required by the Sections 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

a. There were two objections filed to KFCC's STA alleging interference. The FCC used these objections as a rationalization for its ordered reduction in power for the STA. One was formally withdrawn. See Exhibit 6, FCC letter of September 8, 1995, page 1, footnote 3, and also Exhibit 4. Although the other objection filed by KWHI has not yet been withdrawn, KWHI's management orally assured Chameleon that it would not object to KFCC's application to change the STA site into a permanent one. See Werlinger Statement, Exhibit 8, paragraph 9. Inasmuch as these objections, by two rival broadcast stations, were the sole basis for the FCC's rescission of the STA and inasmuch as they were withdrawn, there exists no rational

basis for the FCC rescission and cancellation. The basis evaporated. Moreover, the FCC's efforts to take the station off the air do not serve the public interest.

b. The FCC's other putative basis for rescinding and cancelling Chameleon's STA is that it cannot reach its city of license, Bay City. With its original grant of 1000 watts day, and 300 watts night, KFCC could easily reach its city of license. It is solely on the basis of the FCC's unilateral reduction in power to 300 watts daytime and 50 watts nighttime that accounts for any insufficient signal to Bay City, KFCC's city of license. See Werlinger Statement, Exhibit 8, paragraph 11. It was the FCC's conduct, not Chameleon's, that eliminated the signal's reach into Bay City. This does not serve the public interest as required by the Communications Act and because the disservice to the public was proximately caused by the FCC itself, it is arbitrary and capricious.

c. Despite contentions to the contrary by the FCC's AM Branch, there was no intentional, material misrepresentation by Chameleon Radio in applying for the STA. See STA Application, Exhibit 10. See, also, Werlinger Statement, Exhibit 8, paragraph 4. See generally, David Ortiz Radio Corp. v. F.C.C., 941 F.2d 428 (DC Cir. 1991).

d. The FCC's initial rationale for rescinding Chameleon's STA evaporated, yet the FCC continues to rely on these non-existent rationales. Secondly, the FCC's

original STA grant allowed Chameleon sufficient power to service Bay City. Thus, it was the FCC's unilateral and substantial reduction of power that effectively precluded KFCC's signal from reaching Bay City; it was not KFCC's doing, but rather the FCC's irrational conduct that created the problem. Thirdly, the FCC's allegations of misrepresentation are without foundation in fact, and should be subjected to a thoroughly briefed hearing process. An examination of the record shows that Appellant made no misstatement of facts. The maps are clear on the location. It was the FCC's incompetence and clear factual error that was the problem. The FCC's remedy was to visit their own sins on the Appellant! Exhibit 10; Exhibit 8, page 2, footnote 4. For these reasons, the FCC's actions in rescinding the STA were arbitrary, capricious, and unfounded in either fact or law.

2. Failure to stay the Order of September 8, 1995 or enjoin its enforcement will result in the infliction of immediate and irreparable harm to movant.

Chameleon Radio is faced with a Hobson's choice: it can immediately go off the air and remain silent until its application for permanent change (FCC Form 301) is approved, or it can attempt to find a transmitter site that will allow it to return to Bay City. In the first alternative, immedi-

ately going off the air will result in almost immediate failure and bankruptcy for Chameleon Radio. See Werlinger Statement, Exhibit 8, paragraph 8. In the alternative, the minority and ethnic listeners served by the foreign language programmers who broadcast on KFCC cannot be reached by the station if it returns to Bay City. The station will, in a very short time, be forced into financial bankruptcy and will go silent very quickly. Id.

3. There is no adequate remedy at law, absent the Court's issuance of a stay or injunction of the order's enforcement pending a hearing by this panel.

Chameleon has previously filed a petition for reconsideration with the FCC in accord with 47 U.S.C. Sec. 405 (a). That petition was denied by the FCC shortly after its petition on September 22, 1995. Thus, jurisdiction and ripeness for review are properly before this court under 47 U.S.C. Sec. 402. This court has the authority to grant temporary relief to stay the order and enjoin enforcement of the STA's rescission and cessation of operations pending the final judgment of this court. 47 U.S.C. Sec. 402 (c).

If rescission of the STA causes Chameleon Radio's business to fail, Chameleon will not be able to sue for monetary damages. There exists no provision in the Communications Act of 1934 to provide monetary damages to a party aggrieved in the manner that Chameleon has been injured.

Simply put, the FCC's arbitrary and capricious actions will have jettisoned Appellant out of business without recourse to an adequate remedy at law.

4. A balance of the equities in this case falls heavily in favor of movant and innocent third parties.

a. Injury and inconvenience to the FCC if this court grants a stay of the FCC order or enjoins its enforcement is non-existent or de minimis. The most harm the Commission could incur would be a moderate loss of face for one or more of its mid-level managers. Or it might stop the bureaucratic game of ping-pong that line managers and their supervisors play with the livelihoods, jobs, hard-earned money and ordinary lives of responsible citizens. No dangerous precedent is involved here since STA's are dealt with on a de-facto basis without recourse to principles of stare decisis.

b. Without the protection provided by a stay or injunction, the injury and inconvenience to movant is total and fatal.

Chameleon Radio is not a major communications firm; it is a small business owning only one radio station. In a world of mega-mergers of telecommunications titans, Appellant is barely a cut above a "Mom and Pop" enterprise. Much of its meager assets were expended in purchasing that station. It plainly is in no position to survive what, to any business of such

small size, would be a fatal economic blow. See Werlinger Statement, Exhibit 8, at paragraph 8.

- c. Injury and inconvenience to third parties is great -
- the hardship severe.

Forty programmers, representing eleven different languages from five different continents will lose their only available radio outlet. As a result, they will all suffer great hardship. We bring to this court's attention the unique public service provided to ethnic minorities who have been underserved historically and who have been provided a great public service by Appellant. This unique programming serves Hindus, Muslims, Vietnamese, Russians, and Central and South Americans. Traffic Reports, public health matters and other public affairs concerns are broadcast in these somewhat esoteric tongues to sub-cultures that have been transported deep into the heart of Texas. See Exhibit 9, Affidavits of Khambhati, Mejia and McMaster. The FCC cannot, with not even a vestige of a rational basis, destroy this entity that so clearly serves the public interest.

- d. A valuable public service will be permanently lost. Foreign language radio is a major means for foreign and ethnic minorities to learn of severe weather warnings, natural disasters and other emergency information. Even routine but vital information--such as traffic reports in Vietnamese--will be silenced if KFCC goes silent.

e. Conclusion. The injury and inconvenience to Appellant and--third parties overwhelmingly outweighs any conceivable injury or inconvenience to the FCC.


5. The public interest is best served by allowing KFCC to continue to operate while seeking a full hearing on the merits. KFCC is the only radio outlet in the greater Houston, Texas area for multiple foreign language programming. It provides a vital public service, as demonstrated above. On the other hand, no real public interest is served by enforcement of the rescission -- and certainly not when the primary objection is withdrawn and the secondary objection is generated by the FCC itself. The most cynical "basis" is the FCC's admitted inadvertence in ready the STA application erroneously and then claiming that the Appellant engaged in misrepresentation, when even a cursory reading of the maps show the new site near Missouri City and the old site in Bay City. This epitomizes governmental arbitrariness and capriciousness. It is contrary to law and must be overruled.

WHEREFORE, Appellant respectfully moves this Honorable Court to enter the attached order staying the FCC's Order of September 8, 1995, or in the alternative, enjoining the FCC from enforcing its rescission of its STA order of May 5, 1995

through its cessation of operations order of September 8,
1995.

Respectfully submitted,

CHAMELEON RADIO CORPORATION



Charles Cervantes, DC Bar No. 238345
Adrian Cronauer, DC Bar No. 427503

Its Attorneys

October 6, 1995

MALONEY & BURCH
Suite 1200
1100 Connecticut Ave., NW
Washington, DC 20036-4101
202\293-1414

In The
UNITED STATES COURT OF APPEALS
for the
DISTRICT OF COLUMBIA CIRCUIT

CHAMELEON RADIO CORP.
10865 Rockley Road
Houston TX 77099

Plaintiff

v.

FEDERAL COMMUNICATIONS
COMMISSION
1919 M. Street N.W.
Washington DC

Defendant

Civil Action No 95 _____

Judge _____

**ORDER GRANTING STAY OR ENJOINING ORDER OF SEPTEMBER 8, 1995
TO CANCEL PREVIOUS ORDER GRANTING SPECIAL TEMPORARY
AUTHORITY AND TO CEASE OPERATIONS**

This Court has reviewed Appellant's Motion to Stay or Enjoin the Federal Communications Commission (FCC)'s Order of September 8, 1995 to cancel its previous grant of a Special Temporary Authority and to cease operations at the STA transmitter site. The Court has also reviewed the accompanying Memorandum of Points and Authorities, Moving Affidavits and oral arguments and the opposition by the FCC. Accordingly, now, this Court

FINDS, that if this court does not restrain the enforcement of the FCC's Order rescinding the FCC's Order of May 5, 1995 granting Plaintiff a Special Temporary Authority, then Plaintiff will suffer immediate and irreparable harm for which there is no adequate remedy at law; that Plaintiff has shown a likelihood of prevailing

on the merits; that the balance of the equities falls heavily in favor of the Plaintiff; that if a Stay is not granted by this Court, third parties will suffer severe hardship; and that the public interest is best served by allowing KFCC to continue operations at its STA transmitter site pending a full hearing on the merits and judgment thereon. Therefore, this Court

ORDERS a stay of the FCC Order of September 8, 1995, and

ENJOINS the FCC from enforcing its rescission of the FCC's May 5, 1995 Order granting Plaintiff a Special Temporary Authority, and

FURTHER ENJOINS the FCC from enforcing its cease operations order or taking any other adverse action against Appellant, until such time as there has been a full hearing on the merits and a final decision on this matter.

IT IS SO ORDERED on this 6th day of October, 1995.

JUDGE

CERTIFICATE OF SERVICE

I, Sophie Peresson an intern with the law firm of Maloney & Burch, certify that on the date below, I served, by hand, copies of this Notice of Appeal and Motion to Stay FCC Order of September 8, 1995 Pending A Hearing On The Merits Of The Appeal, on the persons listed below.

William E. Kennard, Esquire
Acting General Counsel
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

and

Janet Reno, Esquire
Attorney General of the United States
10th Street and Constitution Ave., NW
Washington, DC 20530

Date: October 6, 1995


Sophie Peresson

LIST OF EXHIBITS TO THE MOTION

1. May 5, 1995 grant of STA—
2. May 12, 1995 STA amendment (reduction of power)
3. May 18, 1995 Rescission of STA
May 25, 1995 Stay of Rescission
4. September 1, 1995 Withdrawal of Objection
5. September 6, 1995 Notice of 30 day Form 301 Application
6. September 8, 1995 FCC Order Cancelling STA and Order of
Cessation of Operations
7. September 22, 1995 Request for Reconsideration of September 8,
1995 Order
8. 28 U.S.C. Sec. 1746 Statement of Don Werlinger
9. Affidavits of Paul Khambhati, Alex Mejia and Jolene McMaster
10. Chameleon's Application for STA with maps

FCC MAIL SECTION

MAY 11 8 55 AM '95 **FEDERAL COMMUNICATIONS COMMISSION**
WASHINGTON, D.C. 20554

May 5, 1995

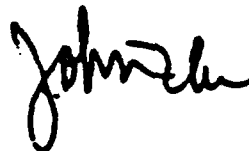
DISPATCHED BY

IN REPLY REFER TO:
8910-JAV
STOP CODE 180082

Chameleon Radio Corporation
10865 Rockley Road
Houston, TX 77099

Radio Station KIOX-AM
Day City, TX

This is in reference to licensee letter dated 4/21/95. Effective 5/5/95. Temporary authority granted to relocate the station .25 Km from presently authorized site to the geographic coordinates NL: 29° 38' 10" WL: 95° 32' 32" due to loss of authorized site. Operating power will be 1,000 watts during daytime hours and 100 watts during nighttime hours utilizing a nondirectional mode on a frequency of 1270 kHz. The type antenna to be used is a self-support, series excited, folded unipole 54.86 m (180') tower producing an inverse distance field of 323.5 mv/m/kW. This tower is one of the three existing towers array. You are cautioned that proceeding with this authority and any construction incident there to are undertaken entirely at your own risk and that this authority does not in any way prejudice what ever action may be taken with regard to your construction permit when filed. This authority is granted in consideration of your good faith and representation that you will submit a completed and acceptable FCC Form 301 prior to expiration of this authority. Reduce power further if interference complaints are received. Your obligation to notify regional F.A.A. of the proposed tower of any possible lighting or marking requirements which are governed by Part 17 of the F.C.C. Rules with which you must comply as a precondition to use this authority. This authority expires 8/1/95.



John Vu
Engineer

James R. Burtie
Chief, AM Branch
Audio Services Division
Mass Media Bureau

EIC- Houston

EXHIBIT

FCC MAIL SECTION

MAY 16 3 14 PM '95

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 12, 1995

DISPATCHED BY

IN REPLY REFER TO:
8910-JAV
STOP CODE 180082

Chameleon Radio Corporation
10865 Rockley Road
Houston, TX 77099

Re: Radio Station KIOX-AM
Bay City, TX

This supersedes STA letter dated 5/5/95 to correct transmitter location and power of operation. This is in reference to licensee letter dated 4/21/95. Effective 5/5/95. Temporary authority granted to relocate the station from presently authorized site to the geographic coordinates NL: 29° 38' 14" WL: 95° 32' 24" due to loss of authorized site. Operating power will be 300 watts during daytime hours and 50 watts during nighttime hours utilizing a nondirectional mode on a frequency of 1270 kHz. The type antenna to be used is a self-support, series excited, folded unipole 54.86 m (180') tower producing an inverse distance field of 323.5 mv/m/kW. This tower is one of the three existing towers array. You are cautioned that proceeding with this authority and any construction incident there to are undertaken entirely at your own risk and that this authority does not in any way prejudice what ever action may be taken with regard to your construction permit when filed. This authority is granted in consideration of your good faith and representation that you will submit a completed and acceptable FCC Form 301 prior to expiration of this authority. Reduce power further if interference complaints are received. Your obligation to notify regional F.A.A. of the proposed tower of any possible lighting or marking requirements which are governed by Part 17 of the F.C.C. Rules with which you must comply as a precondition to use this authority. This authority expires 8/1/95.



James R. Burtie
Chief, AM Branch
Audio Services Division
Mass Media Bureau

John Vu
Engineer

EIC- Houston

EXHIBIT

2

FCC MAIL SECTION

MAY 19 12 54 PM '95

DISPATCHED BY

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
May 18, 1995

IN REPLY REFER TO:
8910-JAV
STOP CODE 1800B2

Chamelon Radio Corporation
10865 Rockley Road
Houston, Tx 77099

Re: Radio Station KIOX-AM
Bay City, TX

This refers to your above-captioned Special Temporary Authority (STA) which was granted on May 5, 1995. Effective 5/18/95. The STA was granted to allow KIOX-AM continuing to serve the public. However, further study of your STA request reveals that KIOX-AM does not cover its city of license, Bay City, TX from the proposed transmitter site in contravention of Section 73.24(i) of the rules. Therefore, the grant of your STA is **HERE BY RESCINDED**, and the licensee should return to its licensed site. Alternatively, if necessary, KIOX-AM should request an STA to remain silence until its finds a new site which covers Bay City.

James R. Burtie
Chief, AM Branch
Audio Services Division
Mass Media Bureau

EIC- Houston

John Vu
Engineer

I hereby stay the effectiveness of the order
James R. Burtie
Chief Audio Services
5-25-95

EXHIBIT

3

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KAREN L. CASPER
ANNE GOODWIN CRUMP
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RICHARD HILDRETH
EDWARD W. HUMMERS JR.
FRANK R. JAZZO
CHARLES M. KENNEDY
KATHRYN A. KLEIMAN
PATRICIA A. MAHONEY
M. VERONICA PASTOR
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
MARVIN ROSENBERG
KATHLEEN VICTORY
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SHELDON J. KORYS
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OF COUNSEL
EDWARD A. CAINE*

WRITERS NUMBER
(703) 80450

September 1, 1995

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: KFCC(AM)
Bay City, Texas

Dear Mr. Caton:

Salem Communications Corporation and its wholly owned subsidiary, South Texas Broadcasting, Inc., licensee of Station KENR, Houston, Texas (collectively "Salem") hereby withdraws its request for cancellation of the Special Temporary Authority issued to Chameleon Radio Corporation for the operation of KFCC(AM), Bay City, Texas. The request was made in South Texas's letter dated May 23, 1995 and was followed by another letter dated June 20, 1995. Those letters should be dismissed and no further consideration given to the request for cancellation of the STA.

Furthermore, Salem is aware of the currently pending application (BP950804AC) by KFCC requesting changes in its facilities. Salem does not object to the granting of facilities requested by KFCC in the above-mentioned application.

Yours very truly,

James P. Riley
Counsel for
Salem Communications Corporation

cc: Mr. Larry D. Eads
Chief, Audio Services Division, FCC
bc: Mr. Don Werlinger ✓
Eric H. Halvorson, Esq.

EXHIBIT

4

**AM BROADCAST APPLICATIONS ACCEPTED FOR FILING AND NOTIFICATION
OF CUT-OFF DATE**

Report No. A-198

Released: September 6, 1995

CUT-OFF DATE: October 6, 1995

Notice is hereby given that the applications listed in the attached appendix are hereby accepted for filing. They will be considered to be ready and available for processing after October 6, 1995. An application in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on October 6, 1995 which involves a conflict necessitating a hearing with any application on this list must be substantially complete and tendered for filing at the close of business on October 6, 1995. Petitions to deny any application on this list must be on file with the Commission no later than the close of business October 6, 1995.

BMP-950307AD WBAJ Blythewood South Carolina

Michael B. Gliner

Has: 880 kHz 1.6 kW DA-D

Req: 890 kHz, 0.001 kW 11 kW (9 kW-CH) ND-1. U

BP-950322AB KHNC, Johnstown Colorado

Donald A. and Sharon E. Wiedeman

Has: 1360 kHz 0.45 kW, 0.5 kW-LS, DA-2 U

Req: 1360 kHz 0.45 kW, 4 kW-LS, DA-2, U

BP-950531AC WTCM, Traverse City, Michigan

WTCM Radio Inc

Has: 580 kHz, 0.5 kW, 5 kW-LS; DA-2, U

Req: 580 kHz, 0.8 kW, 15 kW-LS, DA-2, U

BP-950711AC New, Gunnison, Colorado

John Harvey Rees

Req: 1490 kHz, 1 kW, ND-1, U

BP-950719AB WBZT, West Palm Beach, Florida

American Radio Systems License Corp.

Has: 1290 kHz, 5 kW, DA-N, U

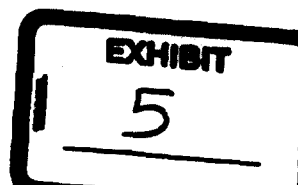
Req: 1290 kHz 4.9 kW 10 kW-LS, DA-2. U

BP-950804AC KFCC, Bay City, Texas

Chameleon Radio Corporation

Has: 1270 kHz, 1 kW. DA-N. U (Bay City, TX)

Req: 1270 kHz, 0.85 kW, 2.5 kW-LS, DA-2, U(Missouri City, TX)



FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 8 1995

In Reply Refer To:
1800B3-KDY

VIA TELECOPIER AND CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Don Werlinger.

**President
Chameleon Radio Corporation
10865 Rockley Road
Houston, Texas 77099**

**In re: KFCC(AM) Bay City, Texas
(formerly KIOX(AM))
Notice of Special Temporary
Authority Cancellation**

Dear Mr. Werlinger:

We have on file Chameleon Radio Corporation's ("Chameleon")¹ August 4, 1995 request for extension of Special Temporary Authority ("STA") to operate KFCC(AM), Bay City, Texas,² at variance from its licensed parameters.³ As set forth below, we deny Chameleon's request for extension.

Background. On April 18, 1995, the Commission approved an application assigning

¹ Don Werlinger ("Werlinger") is listed in the Commission's records as President of Chameleon.

² Station KFCC(AM) is licensed to serve Bay City, Texas, on 1270 kHz with a transmitter power of 1000 watts (DA-N), from a site 5.8 km northeast of Bay City, Texas ("Bay City Site"). The Commission's records indicate that KFCC(AM)'s main studio is located at the Bay City Site.

³ Two Houston-area licensees, South Texas Broadcasting, Inc. ("South Texas") and Tom S. Whitehead ("Whitehead") have filed objections to the STA, alleging, among other things, that the facilities specified in the subject STA cause interference to their respective stations. Both objections remain pending. By letter dated September 1, 1995, South Texas requested withdrawal of its objection.

EXHIBIT

6

KFCC(AM) from Landrum Enterprises ("Landrum") to Chameleon (BAL-950216EA). On April 21, 1995, Chameleon, filed the subject request for STA. Chameleon claimed a need to relocate the station's transmitter "[d]ue to the loss of its currently licensed site." Chameleon proposed to operate from "rural southwest Harris County" ("Harris County Site") at coordinates N29-38-10, W95-32-22 and requested authority to operate nondirectionally at 1000 watts day, 250 watts night. Chameleon further proposed "to utilize a [180'] tower supporting a folded unipole antenna system." Chameleon also stated that, on April 20, 1995, it sought "FAA authority to construct." Claiming that the STA operation will produce no prohibited overlap - "with the exception of KWHI(AM), Brenham, Texas" - Chameleon stated that it intended to file an FCC Form 301 application to seek permanent authority for operations from the Harris County Site. Pursuant to an oral conversation with the Commission staff, Mr. Werlinger was informed that this STA could not be granted because it appeared to involve construction of a new tower.

In response, on May 2, 1995, Chameleon amended its STA request. Chameleon submitted an amended Figure E-1 correcting the coordinates of the above-noted "existing 180' tower" to N29-38-14, W95-32-24. Chameleon stated that "[t]he tower in our original proposal will be the center tower of what will be a three tower array." Chameleon also stated that it intended to file an FCC Form 301 "within 30 days of placing the STA on the air."

On May 5, 1995, the Commission staff granted Chameleon STA to operate with the parameters described in the initial STA request. That letter indicated that the staff believed the STA site to be only 0.25 km from the licensed site.⁴ After further study, though, on May 12, 1995, the Commission staff superseded its May 5 letter to instead specify the amended STA tower coordinates and to reduce KFCC(AM)'s operating power to 300 watts daytime and 50 watts nighttime because of potential interference that was called to the staff's attention. Subsequently, on May 18, 1995, the Commission staff issued a letter to Chameleon rescinding the STA ("Rescission Letter"). The Commission staff stated that further study had revealed that KFCC(AM) could not cover its community of license, Bay City, Texas, from the Harris County Site in apparent contravention of 47 C.F.R. 73.24(i). The Rescission Letter, however, was stayed on May 25, 1995 by action of the Chief, Audio Services Division, Mass Media Bureau, pending further clarification of the record.

By letter dated July 25, 1995, the Chief, Audio Services Division requested Chameleon to respond to several questions regarding the circumstances giving rise to Chameleon's necessity for STA, facts concerning KFCC(AM)'s licensed facility and construction efforts taken pursuant to the STA. See July 25, 1995 Letter From Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger ("Inquiry Letter"). The Inquiry Letter requested

⁴ The May 5th letter was incorrect. The actual site being requested by Chameleon was 80 km from its licensed site. Because Chameleon's amended Figure E-1 depicted an existing 180' foot tower as being "0.25 km from [KFCC(AM)'s] licensed site" the staff inadvertently assumed that the proposed STA site was actually only 0.25 km from the Bay City Site.

Werlinger to:

1. Provide specific details concerning: (a) the circumstances under which Chameleon "lost" the Bay City Site and the date that the "loss" occurred; (b) Chameleon's present legal right of access to the Bay City Site in view of the sublease given to Landrum; (c) the present status of the KFCC(AM) transmission facility at the Bay City Site, and if the status has been changed, the date of any such change and all details concerning the nature and extent of that change; and (d) the present address of the KFCC(AM) main studio.
2. Furnish a showing demonstrating that no better site - other than the Harris County Site - exists from which KFCC(AM) can maintain coverage as closely as possible to the licensed service, including principal community contour coverage of Bay City, Texas.
3. Provide: (a) the name, address and telephone number of the [Harris County Site] owner; (b) any lease or written agreement providing for Chameleon's access to the site; (c) whether Chameleon's principals, or its officers or directors, directly or indirectly, ordered construction of a tower on that site and if so, the date construction of the tower began; (d) the name, address and telephone number of the tower construction contractor; and (e) provide a copy of the FAA filing discussed in the April 21, 1995 STA request and a copy of the FAA Determination of No Hazard.
4. Provide the exact date of consummation of the assignment of KFCC(AM) from Landrum to Chameleon (BAL-950216EA).

After not having received a request for extension of the STA or a timely response to the Inquiry Letter, the Commission staff issued a letter on August 11, 1995 informing Chameleon that the STA had been terminated ("Rescission Letter 2").⁵ On August 11, 1995, Chameleon faxed a date-stamped copy of its extension request and response to the Inquiry Letter ("Response Letter"). Chameleon stated that a copy of this letter had been mailed to the Commission on August 4, 1995.⁶ By letter dated August 11, 1995, the Commission staff

⁵ See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.

⁶ On August 25, 1995, Whitehead faxed a reply to the Response Letter to the Chief, Audio Services ("Reply"). In that letter, Whitehead challenges Chameleon's statements of fact contained in the Response Letter and renews his request for termination of the STA. We will consider the issues raised by the Reply and incorporate those allegations with his earlier-filed

stayed Rescission Letter 2 pending study of the material submitted in the Response Letter.⁷ Meanwhile, on August 4, 1995, Chameleon had filed an application on FCC Form 301 to change KFCC(AM)'s community of license from Bay City, Texas, to Missouri City, Texas, and to modify the station's facilities to operate from the Harris County Site.

With respect to the specific questions identified above, the Response Letter provides the following:

(1) Question 1: Chameleon provides no further information to support its claim in the STA request that it needed to relocate the KFCC(AM) transmitter "[d]ue to the loss of its currently licensed site." Chameleon also does not discuss its present legal right of access to the Bay City Site. Additionally, the Response Letter does not address the present status of KFCC(AM)'s licensed facility at the Bay City Site or any technical changes, if any, that may have taken place at that site. Furthermore, Chameleon does not identify the current location of the KFCC(AM) main studio. Chameleon's only responsive statements regarding the STA are: (1) that it was "making creative use of whatever rules presented themselves in order to save both its business and the outlet it had created for the international community in Houston" Response Letter at 17; and (2) that it "has gone to the outer limits in dealing with the Commission's Rules regarding Special Temporary Authorization. . . ." Response Letter at 19.

(2) Question 2: Chameleon provides no information indicating that it had considered any other site by which KFCC(AM) could maintain its presently licensed service to Bay City.

(3) Question 3: Chameleon states that the tower is owned by Mr. Joe McClish of Economy RF Construction Company, an Austin Texas Communication Company. Response Letter at 10. Chameleon indicates that Mr. McClish, in the course of an April 26, 1995 telephone conversation, expressed his interest in owning the tower and agreed to erect it before May 1, 1995. *Id.* Chameleon also states that none of its funds were expended for the tower's construction and that no "broadcast equipment was placed on the site until after the grant of the STA." *Id.* Chameleon reports that installation of broadcast equipment on the site began immediately upon grant of the STA and was completed by May 7, 1995. *Id.* Chameleon contends that this tower does not require FAA approval. *Id.* Chameleon does not, however, submit a copy of the FAA filing discussed in its April 21, 1995 STA request.

(4) Question 4: Chameleon states that the closing of the assignment from Landrum occurred on April 20, 1995.

Discussion. Based upon our careful review of the Response Letter, we conclude that

objection noted above.

⁷ See August 11, 1995 Letter from Larry D. Eads, Chief, Audio Services Division to Mr. Don Werlinger.